

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH: CHENNAI**

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं  
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.544/Chny/2021  
निर्धारण वर्ष /Assessment Year: 2019-20

M/s. T P D 101 Uthangarai Milk- v. The Income Tax Officer,  
Producers Co-operative Society Ltd., Ward-I,  
1, Pondichery Main Road, Krishnagiri.  
Uthangarai, Krishnagiri-635 208.  
[PAN: AABAT 0377 R] (प्रत्यर्थी/Respondent)  
(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/ Appellant by : Mr.T.S.Lakshmi-  
Venkataraman, FCA  
प्रत्यर्थी की ओर से /Respondent by : Mr.P.Sajit Kumar, JCIT  
सुनवाई की तारीख/Date of Hearing : 19.05.2022  
घोषणा की तारीख /Date of Pronouncement : 31.05.2022

**आदेश / ORDER**

**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 08.09.2021 and pertains to assessment year 2019-20.

**2. The assessee has raised the following grounds of appeal:**

- 1. The order of Commissioner of Income-Tax (Appeals) NFAC, Delhi dt.08.09.21 is opposed to the facts of the case and is not legally maintainable.*
- 2. The first Appellate Authority is not justified in sustaining the disallowance made by the CPC by disallowing chapter VIA deduction of Rs.10,09,800/-, since the appellant has filed the return u/s.139(4) of the Act and made the above claim.*

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*3. The return for the above assessment year was filed on 14-11-2019 by claiming deduction u/s. SOP of the Act to an extent of Rs.10,09,800/- and both the CPC and first Appellate Authority are not justified in denying the above deduction.*

*4. The provision containing sec 80AC of the Act as to the filing of the return within the due date specified u/s.139(1) of the Act, in order to claim deduction u/s. SOP of the Act, is only directory and not Mandatory.*

*5. The appellant is relying on the decision of the IT AT Delhi in the-case of ACIT Vs. Dhir Global Industria Pvt Ltd (2011) 43 SOT 640 (Delhi) and the decision of the Allahabad High Court in the case of Bharat Auto Centre Vs CIT reported in 282 ITR 366. In view of the above decision the appellant is eligible for the claim made under chapter 6A to an extent of Rs.10,09,800/-.*

**3.** The brief facts of the case are that the assessee is a registered Co-operative Society under the Tamil Nadu Co-operative Societies Act, 1983. The assessee had filed its return of income for the AY 2019-20 on 14.11.2019 declaring total income of Rs.1,80,480/- after claiming deduction u/s.80P(2) of Income Tax Act, 1961 (in short "the Act"), amounting to Rs.10,09,800/-. The ACIT/CPC processed the return filed by the assessee u/s.143(1) of the Act, on 20.10.2020 and determined total income at Rs.11,90,280/- after disallowing deduction claimed u/s.80P(2) of the Act, amounting to Rs.10,09,800/-. The assessee challenged the findings of the AO before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in his appellate order dated 08.09.2021, dismissed the appeal filed by the assessee and uphold the additions made towards disallowance of deduction claimed u/s.80P(2) of the Act, on the ground that the assessee is not entitled for deduction, because, it has not filed return of income for the relevant AY within the due date specified u/s.139(1) of the Act, to claim the deduction in light of amendment to provisions of Sec.80AC of the Act, as amended by the Finance Act, 2018 w.e.f. 01.04.2018.

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**4.** Being aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

**5.** The Ld.AR for the assessee submitted that the Ld.CIT(A) is erred in sustaining the disallowance made by the ACIT/CPC towards deduction claimed u/s.80P(2) of the Act, without appreciating the fact that the assessee could not file the return within the due date specified u/s.139(1) of the Act, because, the Audit of the Society was conducted by the Asst. Director (Audit), Co-operative Audit Department, Government of Tamil Nadu, u/s.80 of the Act. The Audit was completed on 08.10.2019. After receipt of the Audit Report, the assessee has filed its return of income on 14.11.2019. Therefore, when the assessee is, otherwise, entitled for deduction, merely, for the reason of small delay in filing return, deduction cannot be denied.

**6.** The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that in order to claim deduction u/s.80P(2) of the Act, the assessee should filed its return of income on or before due date specified u/s.139(1) of the Act, in terms of Sec.80AC of the Act. Since, the assessee does not satisfied the conditions prescribed therein, the ACIT/CPC has rightly disallowed the claim of the assessee and their orders should be upheld.

**7.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. Admittedly, the

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assessee being a Co-operative Society registered under the Tamil Nadu Co-operative Societies Act, 1983, is subject to Audit u/s.80 of the Act, by the Co-operative Audit Department. It is also an admitted fact that the Audit of the assessee's books of accounts has been carried out by the Department and such Audit was completed on 08.10.2019. The assessee claims that the delay in filing of the return for the relevant AY is on account of delay in completion of Audit by the Co-operative Audit Department and such delay cannot be attributed to the assessee, because, completion of Audit by the Department, is not in the hands of the assessee. We have gone through the reasons given by the assessee in light of provisions of Sec.80AC of the Act, and we find that the assessee is, otherwise, entitled for deduction u/s.80P(2) of the Act, in respect of profits derived from its business, because, it has satisfied all conditions prescribed therein. The only reason for the AO to reject the deduction claimed u/s.80P(2) of the Act, was that the assessee does not file its return on or before due date specified u/s.139(1) of the Act. Except this, the AO has not brought on record any other reasons to deny deduction claimed u/s.80P(2) of the Act. Therefore, from the reasons given by the assessee for not filing return of income within the due date specified under the Act, we are of the considered view that the delay in filing of return, cannot be attributable to the assessee, because, completion of Audit by the Co-operative Department, is not under the control of the assessee. Further, the assessee has filed its return of income as soon as it has received the Audit Report from the Department. Further,

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the delay in filing of the return for the relevant AY is very small in as much as the extended due date for filing of return of income for the AY 2019-20 was 31.10.2019, whereas, the assessee has filed its return of income on 14.11.2019. Therefore, considering reasons given by the assessee for delay in filing of return of income for the relevant AY and also taken note of the fact that the assessee is, otherwise, entitled for deduction u/s.80P(2) of the Act, we are of the considered view that the ACIT/CPC were erred in rejecting deduction claimed u/s.80P(2) of the Act. Hence, we direct the AO to allow deduction as claimed by the assessee u/s.80P(2) of the Act, and delete additions made to total income.

**8.** In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 31<sup>st</sup> day of May, 2022, in Chennai.

**Sd/-**

(वी. दुर्गा राव)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 31<sup>st</sup> May, 2022.

**TLN**

**Sd/-**

(जी. मंजूनाथा)

**(G. MANJUNATHA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF